

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE: :

MEMORANDUM DECISION  
AND ORDER

TERRORIST ATTACKS ON  
SEPTEMBER 11, 2001  
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03 MDL 1570 (GBD) (SN)

This document relates to:

*Faulkner v. Bin Laden, et al.*, No. 09-cv-07055 (GBD) (SN)

GEORGE B. DANIELS, United States District Judge:

The fall of the Islamic Republic of Afghanistan (the “Republic”) at the hands of the Taliban impacts the summary judgment motions pending in *Faulkner*, Case No. 09-cv-07055. Lynn Faulkner’s wife Wendy tragically perished in the September 11, 2001 terrorist attacks (“September 11 Attacks”). He brings this action personally and as the executor and personal representative of his wife against the Islamic Emirate of Afghanistan (a/k/a, the Islamic State of Afghanistan), Bin Laden, Al Qaeda, the Taliban, and the Republic of Iran.<sup>1</sup> Faulkner alleges that there was a conspiracy between the defendants to commit the September 11 Attacks in which the Islamic State of Afghanistan acted through the Taliban – the Taliban allegedly being Afghanistan’s de facto government at the time of the Attacks.

Faulkner brought this case on December 4, 2001.<sup>2</sup> At the time, the Taliban was no longer in power and there was a new government, the Islamic Republic of Afghanistan (the

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<sup>1</sup> The Court assumes familiarity with the September 11 Attacks and the general background of the ensuing multidistrict litigation.

<sup>2</sup> The case was originally filed in the District Court for the District of Columbia. *Doe v. Bin-Laden et al.*, No. 01-cv-2516 (RWR) (D.C.C. Dec. 4, 2001). It was transferred to this district as part of the MDL on August 10, 2009. (ECF No. 2188.)

“Republic”).<sup>3</sup> On January 29, 2003, the Clerk of Court entered a default judgment against “The Islamic Emirate of Afghanistan, a/k/a The Islamic State of Afghanistan” (the Afghanistan government under Taliban rule).<sup>4</sup> A year later, the Republic made an appearance on behalf of Afghanistan, and eventually was allowed to defend itself as to limited jurisdictional discovery. *See Doe v. Bin Laden*, 580 F. Supp. 2d 93, 99 (D.D.C. 2008) (“Doe I”).<sup>5</sup> On March 2, 2020, the Republic filed for summary judgment. (ECF No. 164). The parties completed briefing on the motion by May 21, 2021. (ECF No. 181, Case No. 09-cv-07055.) Before there was a decision on the motion, however, the Taliban resurged and usurped power resulting in the collapse of the Republic. In November 2021, counsel for the Republic asked to withdraw, citing that their prior contacts no longer worked for the government, and they had no new contacts with the Taliban. (ECF No. 192, Case No. 09-cv-07055.) On November 10, 2021, Magistrate Judge Sarah Netburn granted the application to withdraw as counsel. (ECF No. 7326)

Now before the Court is Magistrate Judge Netburn’s March 4, 2022 Report and Recommendation (the “Report”) recommending that Afghanistan’s motion for summary judgment be denied as moot.<sup>6</sup> (The Report, ECF No. 7731.) Magistrate Judge Netburn advised the parties that a failure to file timely objections to the Report would constitute a

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<sup>3</sup> Faulkner began this case as “John Doe” on December 4, 2001, in the District Court for the District of Columbia. *Doe v. Bin-Laden et al.*, No. 01-cv-2516 (RWR) (D.C.C. Dec. 4, 2001).

<sup>4</sup> This default is not reflected in the docket for *Faulkner v. Bin Laden et al.*, No. 09-cv-0755, (GBD)(SN) (S.D.N.Y. Aug. 10, 2009), but is reflected in *Doe v. Bin-Laden et al.*, Case No. 01-cv-2516 (RWR) (D.C.C. Dec. 4, 2001), at ECF No. 16.

<sup>5</sup> Afghanistan moved to vacate the judgment, but the D.D.C. denied this application. Afghanistan appealed, but the Appeal was transferred to the Second Circuit, which remanded the case for jurisdictional discovery only. *Doe v. Bin Laden*, 663 F.3d 64, 66 (2d Cir. 2011).

<sup>6</sup> The Report has a detailed summary of the relevant facts. This Opinion provides a succinct summary of the facts needed to adopt the Report in full.

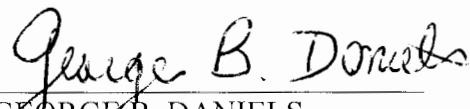
waiver of those objections on appeal. (The Report at 6.) No objections have been filed. This Court ADOPTS Magistrate Judge Netburn's Report and Recommendation.

Magistrate Judge Netburn did not commit a clear error in recommending that the motion for summary judgment be denied as moot. The Republic has collapsed and no one else has appeared on Afghanistan's behalf. In short, right now "Afghanistan is not currently participating in this case." (Report at 5.) Issuing a decision on its merits would de facto allow the Republic to continue to represent Afghanistan's interests, which would amount to a "ghost" of a representation. (Report at 4-5.) Given these facts, there is no suggestion that Afghanistan continues to have "a willingness...to participate in this" litigation. (Report at 5.)

The Report and Recommendation is ADOPTED. The summary judgment motion is dismissed as moot. The Court will proceed with the FSIA's default judgment procedure, where the Court must assess its "subject matter jurisdiction over Afghanistan." The Court of Clerk is directed to close the motion for summary judgment (ECF No. 164, Case No. 09-cv-07055), accordingly.

**MAY 24 2022**  
Dated: May 24, 2022  
New York, New York

SO ORDERED.

  
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GEORGE B. DANIELS  
United States District Judge